

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries)	CC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Waiver)	Application No.161061517
By Pribilof (Alaska) School District)	

PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission’s rules,¹ the Pribilof (Alaska) School District (Pribilof or the District) respectfully requests that the Wireline Competition Bureau (Bureau) reconsider its decision to deny Pribilof’s request for waiver of the E-rate application deadline for funding year 2016. The Bureau denied Pribilof’s waiver request on the ground that it was untimely filed, but Pribilof never received a “decision” from USAC, and thus had no way of knowing what the filing deadline was. Furthermore, in establishing the criteria for waiver of a late-filed application, the Commission accepted and granted waivers filed several months to more than a year after the application window closed. The Bureau is obligated to follow the Commission’s lenient precedent when addressing late-filed applications. Pribilof’s circumstances not only meet the criteria established by the Commission regarding late-filed applications, but also establish that a waiver is in the public interest. Pribilof therefore respectfully asks the Bureau to reverse its decision and waive the application deadline. Pribilof also respectfully requests that the Bureau waive section 54.720 of the Commission’s rules to the extent necessary to grant the requested relief.

¹ 47 C.F.R. § 1.106.

TABLE OF CONTENTS

I.	BACKGROUND	3
II.	RECONSIDERATION AND REVERSAL ARE WARRANTED BECAUSE USAC DID NOT GIVE PRIBILOF NOTICE OF THE RELEVANT DEADLINE	5
III.	A WAIVER OF THE COMMISSION’S RULE IS IN THE PUBLIC INTEREST	9
IV.	CONCLUSION.....	11

I. BACKGROUND

The Pribilof School District serves 65 low-income kindergarten through grade 12 students on St. George and St. Paul Islands in the Bering Sea.² This extremely isolated District lies approximately 300 miles from the west coast of Alaska, 250 miles north of the Aleutian Island chain, and 800 miles from Anchorage. Nearly 100 percent of the District's students are Alaska Native, and 68 percent of the students live in poverty. The District consists of one K-12 school, one K-10 school, and two public libraries that are located within the schools and used by the general public after school hours.

Pribilof's business manager, Tammy White, submitted and certified its FCC Form 471 for funding year 2016 on July 25, 2016, four days after the applicable filing deadline.³ Pribilof filed using the E-rate Productivity Center (EPC) portal on USAC's website.⁴ Once Ms. White filed the application, EPC generated a confirmation screen that said: "You have successfully filed FCC Form 471 #161061517 for FY 2016."⁵ Below that header was the following message:

Your application is being filed after the close of FY 2016 filing window. Funding for such requests will be prioritized after all applications submitted during the application window, as well as any other applications filed after the close of the window but before this application.⁶

Based on this message from USAC, Ms. White believed that Pribilof's application had been accepted, and that the District would need to file a waiver of the application deadline in

² See Exhibit 1.

³ *Id.* Because of the isolation of the District, Ms. White lives more than 800 miles away from the District. She works for the District on a contract basis.

⁴ Pribilof School District Petition for Waiver, CC Docket No. 06-2 (filed Nov. 18, 2016) (Waiver Petition).

⁵ Exhibit 2, Pribilof Application Filing Screenshot.

⁶ *Id.*

order to avoid being prioritized below applications that had been filed on time. In order to help the District prepare and file a request for waiver, the superintendent, Brett Agenbroad, enlisted Kela Halfmann, an E-rate consultant based in Anchorage.

Ms. Halfmann expected that Pribilof would receive a funding commitment decision letter from USAC, at which point the 60-day clock for filing the request for waiver would start. She checked USAC's website for an FCDL several times a week. In the meantime, she and the District prepared their request for waiver, but at no time did Ms. Halfmann, Ms. White, or Mr. Agenbroad have any reason to believe that a filing deadline had been established, as they had received no decision from USAC about their application.

Pribilof never received an FCDL for funding year 2016; nor did it receive any other notification from USAC by mail or email. Eventually, Pribilof concluded that it should file its request for waiver of the application deadline with the Commission, even though it had never received any communication from USAC, and on November 18, 2016, it filed its request.⁷ On December 29, 2016, the Bureau denied Pribilof's request for waiver in a public notice.⁸ The Bureau identified Pribilof's request as an untimely filed request for review.⁹

The Bureau's denial was the first time Pribilof had seen any suggestion that its waiver request had been filed late. After receiving the Bureau's decision and consulting with Commission staff, Pribilof examined its EPC account and email archives and still found no sign of any communication from USAC. Finally, after much investigation and using various search

⁷ Pribilof School District Request for Waiver, CC Docket No. 06-2 (filed Nov. 18, 2016) (Waiver Request).

⁸ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 13-184, Public Notice, DA 16-1448, at 13 (WCB, rel. Dec. 29, 2016) (*Public Notice*).

⁹ *Id.* at 12.

terms, Ms. Halfmann discovered the following notice in the EPC “news feed,” dated July 26, 2016:

This is an acknowledgement that USAC has received Pribilof School District’s FCC Form 471 – 161061517 for Funding Year 2016 on 7/26/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding.

TO REQUEST A WAIVER OF THE FILING DEADLINE:

The window filing requirement is contained in the Federal Communication [sic] Commission (FCC) rules for the E-rate program. USAC cannot consider requests for waivers of FCC rules. If you missed the FCC Form 471 filing window deadline and wish to request a waiver, you may file a waiver request with the FCC. When you file a waiver request, you should list ‘CC Docket No. 02-6’ on the first page of your waiver request. We strongly recommend that you review the information on the USAC website about filing waiver requests.”¹⁰

Pribilof has confirmed with USAC that the notice in the EPC news feed is not emailed to either the account administrator or the Form 471 contact (Ms. White), and that the notice in the news feed was thus the only communication Pribilof received from USAC that indicated the need to file a request for waiver with the Commission. The notice is not titled a decision of USAC and makes no mention of any deadline for filing the request for waiver. Pribilof now timely files this petition for reconsideration.¹¹

II. RECONSIDERATION AND REVERSAL ARE WARRANTED BECAUSE USAC DID NOT GIVE PRIBILOF NOTICE OF THE RELEVANT DEADLINE

As we have explained, Pribilof did not realize until the Bureau denied its waiver request that the request had been filed late. At no point did USAC inform Pribilof that the receipt of the news feed notice in EPC was a decision that started the 60-day clock for filing a request for

¹⁰ See Exhibit 3, Form 471 Notification.

¹¹ 47 C.F.R. § 1.106.

waiver of the application deadline. Pribilof believed that it would receive an FCDL, and that receipt of the FCDL would trigger the waiver request deadline.

As a procedural matter, the notice in the EPC news feed is insufficient notice that a filing deadline has been established. EPC is a new system with well-documented problems, and applicants are still learning how to use the system. Funding year 2016 was the first funding year in which applicants filed through EPC, and Pribilof did not know—indeed, *no* applicant could have known—that the EPC news feed would be the only notice it would receive that its application would not be considered, and the only information it would receive about filing a request for waiver. Furthermore, the news feed is not tailored for the individual applicant; it is a Facebook-like feed containing all sorts of notifications to all EPC users. In other words, when Ms. Halfmann looked at the news feed, she did not just see items directed to Pribilof; she saw a massive list of notices directed to *all* applicants. The content of the news feed is so voluminous, and so cluttered with trivial and irrelevant notifications, that even if Ms. Halfmann had known to look for notification from USAC about Pribilof’s application in the news feed, she could easily have missed it.¹² Given how difficult it is to find anything in the news feed, it is completely inappropriate and insufficient for USAC to use the news feed as the sole means of contacting an applicant about a crucial deadline.

Appropriate notice is all the more important now that, unlike in previous funding years, the filing window is not a window establishing priority of funding requests, but an absolute deadline.¹³ Unfortunately, USAC’s IT system has not recognized this rule change, which the

¹² The news feed literally lists every action taken by anyone in EPC. If, for example, an applicant changes a contact phone number, that will be in the news feed.

¹³ *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, FCC 14-189 at ¶ 114 (2014) (*Second E-rate Modernization Order*).

Commission adopted in the 2014 *Second Modernization Order*. As a result, the confirmation page that is generated when an application is filed incorrectly informs applicants that they are simply not in the first priority of applications to be considered, which was how applications were treated under the old rule. This statement would lead an applicant to believe that it would be in the next batch of funding committed, after those applications that were filed in-window had been addressed, and indeed that is what Ms. White thought.

Using the news feed as the sole means of notifying applicants of the need to file a waiver request is not just insufficient because of the difficulty of finding anything in the enormous volume of notices that the feed contains. It is also inconsistent with how USAC issues notifications of other decisions that trigger appeal rights and obligations. When USAC issues a funding commitment decision letter, it sends an email to the contacts listed on the FCC Form 471. If the Commission is going to treat the notification as a decision, USAC should be required to email the notification to the applicant in the same way other adverse decisions are emailed. Applicants should not have to check their portal every day to make sure they haven't received some important piece of correspondence from USAC. Such a requirement would make the program even more burdensome to applicants who are already struggling to navigate the application process and violates basic due process principles.

Pribilof seeks reconsideration not only because it received insufficient notice from USAC, but also because Commission precedent requires leniency toward applicants that file their waiver requests late. In its 2010 *Academy of Math and Science* order, the Commission established the criteria justifying special circumstances for the waiver of the application

deadline.¹⁴ In that order, the Commission granted numerous waiver requests that were filed months after the window closed.¹⁵ For example, in funding year 2009, the waiver request filed by Bedford Public Schools was granted even though it was filed six months after the window closed, because the district filed its application less than 14 days after the window closed.¹⁶ That was true for several other applicants as well.¹⁷ In fact, some schools filed their waiver requests more than a year after the window closed for their funding year.¹⁸

Here, Pribilof filed its application only four days after the filing deadline, which meets the standard established for a waiver. Significantly, its waiver request was filed in a time period comparable to those applicants whose waivers were granted in *Academy of Math and Science*. Pribilof understands that the Commission needs to have an orderly administration of the program, and that deadlines are an essential component. However, Pribilof respectfully argues that the Bureau's treatment of late-filed requests for waiver of the application deadline must be consistent with the *Academy of Math and Science* precedent, until the Commission changes that

¹⁴ *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science*).

¹⁵ *Id.* Even if the notification that USAC attempts to issue now was not available at that time, USAC or the Commission needs to be more clear to applicants that that notification is the “decision” that starts the appeal clock. Better yet, USAC should replace the incorrect language that appears with the language from the notification, plus the 60-day deadline for filing a waiver should be included. In addition, that notification should be emailed to the contacts listed on the FCC Form 471.

¹⁶ *Academy of Math and Science* at Appendix B.

¹⁷ *See id.*, e.g., waiver requests filed by: Berryhill Independent School District 10 (funding year 2008 window closed Feb. 7, 2008, waiver request filed August 19, 2008); Burnet Consolidated Independent School District (funding year 2007 window closed Feb. 7, 2007, waiver request filed Oct. 23, 2007); Congregation Machon Tieferes (funding year 2009 window closed Feb. 12, 2009, waiver request filed Sept. 14, 2009); and Greenport Union Free School District (funding year 2008 window closed Feb. 7, 2008, waiver request filed Sept. 18, 2008).

¹⁸ *See Academy of Math and Sciences*, Appendix B, petitioner Academy of Math and Sciences (funding year 2005 window closed Feb. 18, 2005, waiver request filed July 19, 2006; Arlington Public Schools, funding year 2006 window closed Feb. 16, 2006, waiver request filed August 13, 2007).

precedent, and must therefore grant such late-filed requests, even those that are filed months late. This leniency is all the more appropriate under the circumstances here, where USAC has failed to give the applicant sufficient notice of the deadlines and a sufficient explanation of the process.

Finally, to the extent that the Bureau concludes that arguments made in this petition were not raised in the underlying request for waiver, Pribilof respectfully reminds the Bureau that at the time it filed the request for waiver, Pribilof had no idea that its request was not timely. As such, Pribilof had no reason to make any of the arguments included herein.¹⁹

III. A WAIVER OF THE COMMISSION'S RULE IS IN THE PUBLIC INTEREST

Finally, a waiver of the application deadline in this case would advance the E-rate program's goals and would be in the public interest. Any of the Commission's rules may be waived if good cause is shown.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²²

Pribilof urges the Bureau to consider the hardships it faced as it attempted to navigate EPC and seek funding for 2016. Spotty Internet connection hindered Pribilof's ability to file its FCC Form 471 for 2016 on time, as Ms. White's connection repeatedly timed out.²³ In addition, staffing changes temporarily limited the District's access to EPC and left the District without

¹⁹ See 47 C.F.R. § 1.106(b)(2), (c).

²⁰ 47 C.F.R. § 1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ *Id.*

experienced E-rate staff.²⁴ Pribilof urges the Bureau to consider the technological and logistical challenges faced by a tiny, extraordinarily remote school district navigating a new and complicated electronic filing system for the first time.

Most importantly, though, it would be unjust and contrary to E-rate program goals to penalize a poor school district that did the best it could to comply with the E-rate rules after receiving incorrect and incomplete information from USAC. The school district acted in good faith at all times, and there was no waste, fraud, or abuse. Granting the instant petition not only would cause no harm to the Fund; it would actually advance the goals of the program by allowing available E-rate funds to reach one of the remotest, most economically vulnerable school districts in the United States. As Pribilof stated in its request for waiver, the loss of 2016 funding over a mere procedural error would create a “dire financial hardship” for an already challenged school district.²⁵ As such, it is in the public interest for the Bureau to grant the requested relief.

Finally, the public interest considerations described above are equally valid whether Pribilof’s request for waiver was timely filed or not. Accordingly, should the Bureau again conclude that Pribilof’s request was untimely filed, Pribilof respectfully requests that the Bureau waive section 54.720 of the Commission’s rules to the extent necessary to grant the requested relief.²⁶

²⁴ Request for Waiver at 3. Pribilof’s business manager, Ms. White, had EPC credentials but was not the administrator. Pribilof’s previous superintendent was the administrator, but she left without ensuring that her successor, Brett Agenbroad, had the same access to EPC. As an added challenge, Ms. White lives in Kenai, Alaska, approximately 800 miles away from Mr. Agenbroad.

²⁵ *Id.*

²⁶ 47 C.F.R. § 54.720.

IV. CONCLUSION

For the foregoing reasons, Pribilof respectfully requests that the Bureau grant this petition for reconsideration and reverse its denial of Pribilof's request for waiver of the application deadline with respect to the above-captioned application. Pribilof also respectfully requests that the Bureau waive section 54.720 of the Commission's rules to the extent necessary to grant the requested relief.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Broadband Legal Services
1629 K Street, NW Suite 300
Washington, DC 20006
DC Bar # 452207
gina@broadbandlegal.com
202-907-6252

January 27, 2017

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of January, 2017, a true and correct copy of the foregoing Petition for Reconsideration was sent via email to:

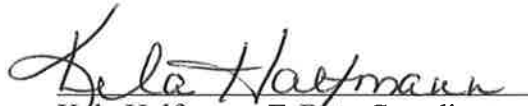
SLD, Universal Service Administrative Company, Appeals@sl.universalservice.org

/s/ Theresa Schrader

Affidavit of Kela Halfmann

I, Kela Halfmann, swear:

1. That I am E-Rate Coordinator at SERRC – Alaska's Educational Resource Center. I was engaged by the Pribilof School District in August 2016 to assist with the request for waiver that is the subject of this petition for reconsideration.
2. That I have read the foregoing appeal and avow the information stated therein is true and correct to the best of my knowledge and belief.

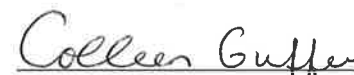


Kela Halfmann, E-Rate Coordinator
SERRC - Alaska's Educational Resource Center
805 W. 3rd Avenue
Anchorage, Alaska 99501

Subscribed and sworn to before me this 26th day of January, 2017.

[Seal]

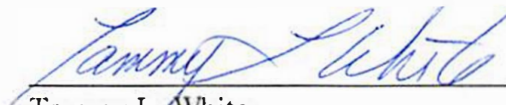



Notary Public in and for Alaska
My Commission Expires 6/26/20

Affidavit of Tammy L. White

I, Tammy L. White, swear:

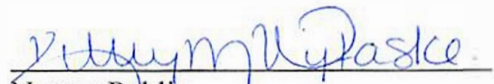
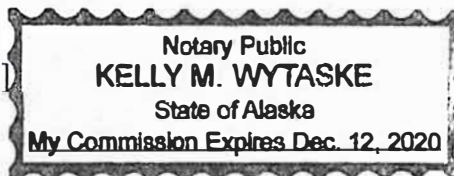
1. That I am business manager for the Pribilof School District. I have been in that position since July 1, 2015.
2. That I have read the foregoing appeal and avow the information stated therein is true and correct to the best of my knowledge and belief.



Tammy L. White
Business Manager
Pribilof School District
PO Box 207
St. Paul Island, AK 99660

Subscribed and sworn to before me this 26 day of January, 2017.

[Seal]



Notary Public

Certifier Information

Pribilof School District (BEN: 17000376) - Internet Access - Form # 161061517

Last Saved: 7/25/2016 9:25 PM EDT

Basic Information

Entity Information

Funding Requests

Connectivity Information

Certify

You have successfully filed FCC Form 471 #161061517 for FY 2016

Certification Date

7/25/2016 9:25 PM EDT

Your application is being filed after the close of FY 2016 filing window. Funding for such requests will be prioritized after all applications submitted during the application window, as well as any other applications filed after the close of the window but before this application.

Authorized Person

Name Tammy White

Title Business Admin

Employer Pribilof School District

Address 930 Tolstoi
PO Box 207
St Paul Island, AK 99660

Phone 907-460-0047

Email twhite@pribilof.org

FCC Form 471 Help

[Show Help](#)



E-rate Productivity Center This is an acknowledgement that USAC has received Pribilof School District's FCC Form 471 - 161061517 for Funding Year 2016 on 7/26/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding.

TO REQUEST A WAIVER OF THE FILING WINDOW DEADLINE:

The window filing requirement is contained in the Federal Communication Commission (FCC) rules for the E-rate program. USAC cannot consider requests for waivers of FCC rules. If you missed the FCC Form 471 filing window deadline and wish to request a waiver, you may file a waiver request with the FCC. When you file a waiver request, you should list "CC Docket No. 02-6" on the first page of your waiver request. We strongly recommend that you review the information provided on the USAC website about filing waiver requests.

Please keep a copy of this notification for your records. To print this notification, click on the Date below, and use your browser's print function.

You can view your entire Form 471 by clicking the link below.

[Internet Access - #16...](#) [#17000376 - Pribilof ...](#)

Jul 25, 2016 ☆ 🔒 [Comment](#) [Hide Info ▲](#)

**Application
Number** 161061517

Entity Number 17000376

Certification Date Jul 26, 2016